

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

PILOT TRAVEL CENTERS LLC

UST NO. 198606315

SPILL NO. 032211-RLT-1102

**ADMINISTRATIVE
CONSENT ORDER**

2011-UT- 04

TO:

**Pilot Travel Centers LLC
Attn: Joey Cupp, Environ. Manager
5508 Lonas Drive
Knoxville, TN 37909**

**CT Corporation System
500 East Court Avenue
Des Moines, IA 50309**

I. SUMMARY

The Iowa Department of Natural Resources (Department) and Pilot Travel Centers LLC (Pilot) hereby agree to the following Administrative Consent Order (Order). Pilot agrees to pay an administrative penalty of \$1,500 to the Department. See Sections IV and V for more details.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

**Tom Collins
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/281-8879**

Relating to legal requirements:

**Aaron Brees, Attorney
Iowa Department of Natural Resources
Des Moines, Iowa 50319-0034
Ph: 515/281-5965
aaron.brees@dnr.iowa.gov**

Payment of penalty to:

**Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 503219-0034**

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II. JURISDICTION

This order is issued pursuant to Iowa Code sections 455B.474(1)(f)(11) and 455B.476, which authorize the Director of the Department to issue any order necessary to secure compliance with Iowa Code chapter 455B, Division IV, Part 8 and Department rules contained in chapter 567 Iowa Administrative Code (I.A.C.) 135. Iowa Code section 455B.109 and administrative rules in chapter 567 I.A.C. 10 authorize the Director to assess administrative penalties up to \$10,000.

III. STATEMENT OF FACTS

The Department and Pilot hereby agree to the following statement of facts:

1. Pilot is the registered owner of a facility containing four 20,000 gallon petroleum underground storage tanks (USTs) located at 2086 Atalissa Road, Atalissa, Iowa 52720. This facility is a truck stop engaged in the retail sale of petroleum products including diesel fuel.
2. On March 19, 2011 at 8:40 PM, a semi-truck driver failed to properly attend to the fueling of his truck at the above facility, resulting in an overflow spill of approximately 40 gallons of diesel fuel.
3. The spill was observed by a store employee when the truck pulled away from the dispenser. The employee questioned the driver who stated that the auto shutoff on the nozzle did not function properly. Later testing by the store reportedly showed the shutoff to be working correctly.
4. The spill was reported to Jill Claeys, general manager of the facility, shortly after it took place. Ms. Claeys directed onsite staff to report the spill to the Pilot help desk. Chip Hughes, Pilot environmental manager, was not informed of the spill until March 22, 2011 at 8:30 AM. Pilot's environmental consultant, Pangean-CMD Associates (Pangean), was also made aware of the spill around that time.
5. The spill was first reported to the Department on March 22, 2011 at 10:55 AM by Lori Robison of Pangean.
6. According to the Spill Report completed by Lori Clark of Pangean, the spilled diesel fuel did not spread beyond the concrete area around the dispensers. Absorbent booms were used to prevent the fuel from migrating to drains or other areas of concern. Kitty litter was used to absorb the fuel. The used booms and kitty litter were then placed in 55 gallon drums for proper disposal.

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IV. CONCLUSIONS OF LAW

The parties hereby agree that the following conclusions of law are applicable to this matter:

1. Iowa Code chapter 455B, Division IV, Part 8 (sections 455B.471-455B.479) establishes the Underground Storage Tank (UST) program. Section 455B.472 declares that the release of regulated substances, including petroleum products, from USTs constitutes a threat to the public health and safety and to the natural resources of the state, and this regulatory program is necessary to adequately address this concern. Iowa Code section 455B.474 authorizes the Environmental Protection Commission (Commission) to adopt rules related to release detection and prevention, financial responsibility, tank closure, site assessment, risk classification, corrective action, and reporting and record keeping requirements applicable to all owners and operators of USTs. The Commission has adopted such rules in 567 I.A.C. chapters 135 and 136.
2. Iowa Code section 455B.471(6) defines an "owner" of USTs. Pilot was an owner of USTs at the above referenced facility at all times relevant to this Order.
3. Iowa Code section 455B.471(5) defines "operator" of USTs as "...a person in control of, or having responsibility for, the daily operation of the underground storage tank." Pilot is an operator of the above referenced facility and has been at all times relevant to this Order.
4. "Petroleum" is a "regulated substance" as defined in Iowa Code sections 455B.471(7) and (8). Petroleum products in sufficient quantity are "hazardous substances" as defined by 567 I.A.C. 131.1.
5. 567 I.A.C. 135.6(4) states that owners and operators of USTs must report spills and overfills to the Department within 24 hours if the spill or overfill exceeds 25 gallons.
6. 567 I.A.C. 135.6(4) states that owners and operators of USTs must report spills and overfills to the Department within 6 hours if the spill or overfill exceeds 25 gallons and a "hazardous condition" exists. "Hazardous condition" is defined in 567 I.A.C. 131.1 to include "actual spillage onto the land...of a hazardous substance" that "because of the quantity, strength and toxicity...creates an immediate or potential danger to the public health or safety or to the environment." In addition, 567 I.A.C. 131.2 states that a hazardous condition must be reported to the Department as soon as possible, but not later than six hours after it is discovered.
7. The release of approximately 40 gallons of diesel fuel, a hazardous substance, onto the surface at the dispenser area of the facility constituted a hazardous condition.
8. Pilot violated 567 I.A.C. 135.6(4) and 131.2 by waiting approximately 62 hours to report a spill and hazardous condition to the Department.

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V. ORDER

THEREFORE, the Department hereby orders and Pilot agrees to the following:

1. Pilot shall pay to the order of the Iowa Department of Natural Resources an administrative penalty of \$1,500 within 30 days of receipt of this Order.
2. Pilot shall comply with 567 I.A.C. 135.4(7)c(1) which requires that "written basic operating instructions, emergency contact names and telephone numbers, and basic procedures specific to the facility shall be provided to all Class C operators and readily available on site." Pilot shall provide a copy of these documents to the Department within 30 days of receipt of this Order.

VI. PENALTY

1. Iowa Code section 455B.477 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

2. Iowa Code sections 455B.476 and 455B.109 authorize the Commission to establish by rule a schedule of civil penalties up to \$10,000 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties. See 567 I.A.C. 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty.

ECONOMIC BENEFIT: Not applicable.

GRAVITY: The existence of a hazardous condition where a combustible liquid spilled onto the surface of the dispenser area presented a potential risk to the environment and public health and safety. Failure to report the spill in a timely manner is a serious violation. A penalty of \$1,000 is assessed.

CULPABILITY: There was no intent to hide the spill on Pilot's part, rather there appears to have been a breakdown in communication that resulted in the failure to report the spill as required. The Department provided written instructions to Pilot in March 2010, detailing how to respond to a spill. These instructions were to be posted onsite by April 14, 2010. The instructions were either not available to onsite staff as required, or were not followed. For this factor, \$500 is assessed.

The total penalty calculation from the above three categories is \$1,500.

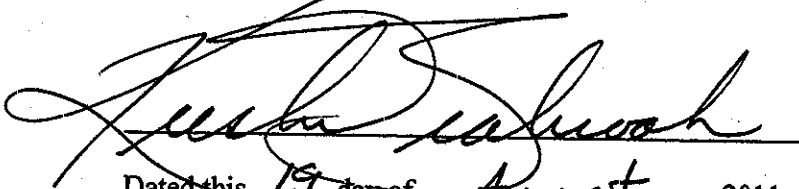
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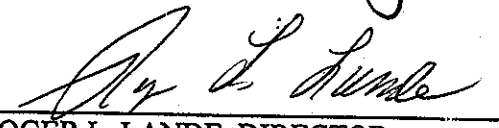
VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.476, and 561 I.A.C. 7.4(1), as adopted by reference by 567 I.A.C. chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Pilot. By signing this Order all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.477.


Dated this 19 day of August, 2011



ROGER L. LANDE, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 26th day of August, 2011

Pilot Travel Centers LLC; Tom Collins; Aaron Brees; V(B), IV(A)